

ORIGINAL

## APPLICATION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY

03-70784

United States District Court		Eastern District of Michigan	
Name: SAMUEL BAINS		Inmate Number: 134408	PAUL D. BORMAN Case Number (official use only) MAGISTRATE JUDGE CARLSON
Place of Incarceration:		COOPER STREET CORRECTIONAL FACILITY 3100 COOPER STREET JACKSON, MI 49201	
Name of Petitioner (Include the name under which you were incarcerated) (authorized person having custody over you) SAMUEL BAINS		Name of Respondent THOMAS WARDIN, PHILLIPS R.	
The Attorney General of the State of:			

## PETITION

- Name and location of court which entered the judgment of conviction under attack: THIRD JUDICIAL CIRCUIT OF MICHIGAN, 610 FRANK MURPHY HALL OF JUSTICE 1441 ST ANTOINE
- Date of judgment of conviction: 2/22/97 GUILTY PLEA
- Length of Sentence: 13 TO 15 YEARS
- Nature of offense involved (all counts): RETAIL FRAUD AND FOURTH HABITUAL OFFENDER RETAIL M.C.L.A. 750360 C DOCKET 96-7813-01 ENHANCE WITH OR FROM DOC. 88-89719 FH JUDGE DAVID BREACK, NO JURISDICTION WITH ARRAIGNMENT SENTENCE 1 YEAR SUSPEND & 1 TO 15 4TH HABITUAL OFFENDER SAME DOCKET

- What was your plea? (check one)

- (a) Not guilty ☐
- (b) Guilty ☒
- (c) Nolo contendere ☐

If you entered a guilty plea to one count of indictment, and a not guilty plea to another count or indictment, give details: \_\_\_\_\_

- If you pleaded not guilty, what kind of trial did you have? (check one)

- (a) Jury ☐
- (b) Judge only ☐

- Did you testify at the trial?

Yes ☐ No ☐

- Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: MICHIGAN COURT OF APPEALS
- (b) Result: AFFIRMED CONVICTIONS
- (c) Date of result and citation, if known: OCTOBER 28, 1997
- (d) Grounds raised: SAME, EXHAUSTED UNDER ROSE V LUNDY 102 S.CT.1198

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court: michigan SUPREME COURT Docket 681111
- (2) Result: LEAVE TO APPEAL DENIED
- (3) Date of result and citation, if known: MICHCT. APP. MAY 28, 1997
- (4) Grounds raised: SAME  
INEFFECTIVE ASSISTANCE OF COUNSEL, JURISDICTION, ARRIGNMENT

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court: \_\_\_\_\_
- (2) Result: \_\_\_\_\_
- (3) Date of result and citation, if known: \_\_\_\_\_
- (4) Grounds raised: \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐

No ☒

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court: \_\_\_\_\_
- (2) Nature of proceeding: \_\_\_\_\_
- (3) Grounds raised: \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application, or motion?  
Yes ☐ No ☐

(b) As to any second petition, application, or motion give the same information:

- (1) Name of court: OAKLAND COUNTY CIRCUIT SIXTH JUDICIAL CIRCUIT
- (2) Nature of proceeding: MCR 6.500 RELIEF FROM JUDGMENT  
DOUBLE JEOPARDY

(3) Grounds raised: FRAUD ON THE COURT , LACK OF JURISDICTION FOR  
I WAS SENTENCE TO RAP , WITHOUT THE ARRAIGNMENT ON 1-15 88-89719FH NEWLY  
DISCOVERY OF EVIDENCE , JANURARY 10,2002 MICHIGAN SUPREME COURT TRANSCRIPT S  
I WAS DENIED TRANSCRIPT ON WIT AND A YEAR LATER WAS MAIL FROM SUPREME COURT .

(4) Did you receive an evidentiary hearing on your petition, application, or motion?  
 Yes ☐ No ☐

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application, or motion explain briefly why you did not: LATE APPEAL FOR REASON OF M.B.O.C NOT MAILING ,

FILE A COMPLAINT IN CASE NO. 00-2369 FILED FEB. 09, 2001 SIXTH CIRCUIT .

ARRAIGNED BY MAIL ON HABITUAL FOURTH , AFTER 277 DAY SENTENCE AGAIN DOUBLE JEOPARDY  
FORGED MY NAME TO WAIVER OF ARRAIGNMENT BY ATTORNEY OF RECORD . NEWLY DISCOVERY OF  
EVIDENCE OF TRANSCRIPT OF WAIVER OF ARRAIGNMENT WITH HIS SIGNATURE .

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds, and facts supporting same. **CAUTION:** In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any of these grounds:

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by the use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

(A) Ground one: NEVER ARRAIGNED FOR FRAUDULENTLY SIGNING MY NAME ON A WAIVER  
ARRAIGNMENT 277 DAY AFTER ARRESTED , BEYOND 21 DAYS FOR HABITUAL OFFENDER STATUE

Supporting FACTS (tell your story *briefly* without citing cases or law: FIRST FILE IN MAY 28, 98  
ON WIT HABEAS CORPUS CIVIL NO98-40240-FL RESUBMITTED IN CASE 99CV-74594-DT

DISTRICT ERROR , & FILE DESTROY IN FIRE , NEWLY DISCOVERY OF EVIDENCE IN TRANSCRIPT  
FROM THE OFFICE SUPREME COURT ADMINISTRATION ON JANUARY 10, 2002 that I WAS NOT UNDER  
JURISDICTION OF THE COURT IN CASE 88-89719 AND 96-7813-01 FOR LACK OF ARRAIGNMENT  
L = DAVID A BINKLEY FORGED MY NAME TO WAIVER OF ARRAIGNMENT MY MAIL 0437/93

OTION GRANT BY JUDGE PAUL LGADOLA 98-CV-40240\_f1 on EXHAUSTED CLAIM UNDER ROSE .

NO Compelling Reason to dismiss NOWACZYK V. Landrum 299 F3d 69 (2002)

4. At sentencing: BY ATTORNEY OF RECORD MELINDA CAMERON W SIX MILE OFFICE  
HER PHONE NUMBER IS (313) 534 -8939 IN DOCKET 96-7813-01
5. On appeal: DANA D CARRON , DID OMITED THE ISSUE , EXCEPT I DID FILE  
CONCERNING THE ATTORNEY CONFESS TO FRAUNTLY SIGNING MY SIGNATURE IN CASE 93 -  
153743
6. In any post-conviction proceeding: \_\_\_\_\_
7. On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

1. If yes, give name and location of court which imposed sentence to be served in the future:

2. Give date and length of the above sentence:

3. Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, Movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

pro pro. Sht

Signature of Attorney (in any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12.11.02

Date

Sht

Signature of Movant

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SAMUEL BAINS ,  
PETITIONER,

CIVIL ACTION# \_\_\_\_\_

V

T. G. PHILLIP, WARDEN ,  
\_\_\_\_\_ /

MOTION FOR EVIDENTIARY HEARING , &  
[FRCP]RULE §26(g)(2)(A) A) (C) , AND 18§USC3006 .  
\_\_\_\_\_

NOW COMES SAMUEL BAINS, PRO. SE . PURSUANT TO 28 U.S.C. §636(b)  
UNDER 28 U.S.C. §2254 . THIERIN MOVE THIS HONORABLE COURT TO GRANT  
HIM AN EVIDENTIARY HEARING , TO COMPEL DISCOVERY ,AND APPOINTMENT  
OF ATTORNEY ON NEWLY DISCOVER OF EVIDENCE .DATE TO BE SET BY THE  
COURT , RULE 61 FEDERAL RULES OF CIVIL PROCEDURE.

1. THIS HONORABLE COURT HAS JURISDICTION OVER THE INSTANT  
MOTION PURSUANT TO 28 U.S.C. §636(b) & RULE 60 (b)(A)  
CLERICAL MISTAKES. DURING THE PENDENCY OF AN APPEAL (b)  
MISTAKES ; INADVERTENCE ; EEXCUSABLE NEGLECT; NEWLY DIS-  
COVERED EVIDENCE ; FRAUD , ON MOTION AND UPON SUCH TERMS  
RESENTATIVE FROM A FINAL JUDGMENT , ORDER , OR PROCEEDING  
FOR THE FOLLOWING REASONS:

1 OF 1 MISTAKE ,

2. NEWLY DISCOVERED THE MOTION SHALL BE MADE WITHIN A  
REASONABLE TIME , AND FOR REASONS (1)(2)AND (3)NOT MORE  
THAN ONE YEAR AFTER THE JUDGMENT , ORDER , OR PROCEEDING  
WAS ENTERED OR AT TAKEN .

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
-----

§RULE 16 DISCOVERY AND INSPECTION PLAN [F.R.C.P. ]§

DEFENANT ATTORNEY OF RECORD DAVID A BINKLEY (P31643)  
ADDREES ATTORNEY , DAVID BINKLEY A, P31643  
COX HODGMENT & GIAMARCO,,PC.  
101 W. BIG BEAVER RD F. 10  
TROY , MICHIGAN 48084

WE HEREBY COMMAND YOU THAT ALL BUSINESS AND EXCUSES CEASING  
YOU TO APPEAR IN PROPER PERSON , BEFORE THE DISTRICT  
COURT MAGISTRATE JUDGE FOR THE UNITED STATES COURT HOUSE  
, TO BE HELD IN AND FOR THE PLAINTIFF SAMUEL BANS , DISCOVERY  
UNDER RULE 16 , IN THE COUNTY OF WAYNE ON -----AT-----  
AM/PM. ) TO TESTIFY AND TO THE TRUTH OF SIGNING A WAIVER  
OF ARRIGNMENT BY MAIL , IN CASE 88-89719FH HABITUAL OFFENDER  
ARRAIGNEDMENT . IN OAKLAND COUNTY CIRCUIT COURT ON -----  
& FILE DOCUMENT (S) OF ATTORNEY GRIEVANCE COMMISSION FILE  
0427-93 AND TRANSCRIPT WITH STATEMENT MADE MY YOU CONERNING  
FORGERY , IN DOCKET CASE 93-453743 JUDGE RUDY J. NICHOLS  
COURT JUNE 16, 1993 SUMMARY DISPOSITION . THIS MATERIAL  
IS BASIC OF ILLEGAL SENTENCE , AND LACK OF JURISDICATION  
IN CASE 96-7813-01 ENHANCE FROM A DUE PROCESS VIOLATION  
IN CASE 88-89719FH JUDGE DAVID BRECK . WHEREFOR HE STAND  
INDICTED AND THAT YOU BRING WITH YOU AND PRODUCED AT THE  
TIME AFOREMENTIONED SPECIFIED ITEMS ABOVE . CONCERNING  
THE PREMISE AND THAT YOU ARE NO TO OMMITED UNDER THE PENALTY  
OF 50,000 DOLLAR SANCTION PURSUANT TO RULE 37 FRCP

Samuel Bains  
SAMUEL BAINS



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN  
DIVISION

SAMUEL BAINS , PETITIONER,

V

civil ACTION .....

T.G. LPHILLIP , WARDEN.  
...../

BREIF IN SUPPORT  
.....

PURSUANT TO RULE 26 FEDEERAL RULE OF CIVIL PROCEDURES  
GENERAL PROVISIONS GOVERNING DISCOVERY ; DUTY OF DISCLOSURE.  
(E) SUPPELEMENTATION OF DISCLOSURES AND RESPONSES . A PARTY  
WHO HAS MADE A DISCLOSURE UNDER SUBDIVISON (A) IF THE PARTY  
LEARNS THAT IN SOME MATERIAL RESPECT THE INFORMATION DISCLOSED  
IS INCOMPLETE OR INCORRECT AND IF THE ADDITIONAL OR CORRECTIVE  
INFROMATION HAS NOT OTHERWISE BEEN MADE KNOWN TO THE OTHER  
PARTIES DURING THE DISCOVERY PROCESS OR IN WRITING . WITH  
RESPECT TO TESTIMONY OF AN EXPERT FROM WHOM A REPORT IS  
REQUIRED UNDER SUBDIVISION (A) (2) (B) THE DUTY EXTENDS  
BOTH TO INFORMATION CONTAINED IN THE REPORT AND TO INFORMATION  
PROVIDED THROUGH A DEPOSITION OF THE EXPERT , AND ANY  
ADDITIONS OR OTHER CHANGES TO THIS INFORMATION SHALL BE  
DISCLOSED BY THE TIME THE PARTY'S DISCLOSURES UNDER RULE  
26 (A) (3) ARE DUE.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SAMUELEBAINS PETITIONER,

V

TYG PHILLIP, WAEDEN, RESPONDENT.

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STATEMENT OF FACT

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DISCUSSION

THE PROVISIONS OF THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 ("AEDPA") PUB. L. NO. 104-132, 110 STAT. 1214 (APR 24, 1996), GOVERN THIS CASE BECAUSE PETITIONER FILED HIS HABEAS CORPUS AFTER THE AEDPA'S EFFECTIVE DATE. SEE LINDN V. MURPHY, 521 U.S. 320, 336, 117 S. CT. 2059, 138 F.3D 481 (1997) AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT SHALL NOT BE GRANTED WITH RESPECT TO ANY CLAIMS THAT WAS ADJUDICATED ON THE MERITS IN STATE COURT PROCEEDING (S) UNLESS THE ADJUDICATION OF THE CLAIM: (1) WAS CONTRARY TO ..CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED THE BY SUPREME COURT OF THE UNITED STATES OR (2) INVOLVED AN UNREASONABLE APPLICAITON OF ..CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES. (3) (UNREASONABLE MEANS DEVOID OF RECORD SUPPORT OR OFFENSIVE TO EXISTING PRECEDENT" OR ARBITRARY TO THE POINT OF BEING OUTSIDE THE UNIVERSE OF PLAUSIBLE CREDIBLE OUTCOME )

THE FEDERAL JUDGE IDENTIFIED THE MITIGATING EVIDENCE THAT COUNSEL HAD FAILED TO INTRODUCE AND REJECTED THE ARGUMENT THAT SUCH FAILURE TO FILE ON APPEAL THE ATTORNEY . BREACH OF PLEA AGREEMENT , CAUSE PREJUDICE . WHEN DAVID BINKLEY PROMISE ARRAIGNMENT BY MAIL , AND TREATMENT IN DRUG PROGRAM CALLED RAP. HE BREACH A AGREEMENT WITH PROSECUTOR OFFICE . WHEN HE SIGN MY NAME WITHOUT BY PRESENCE OR SIGNATURE . THE STATE'S BREACH OF AGREEMENT CONCERNING SENTENCE RECOMMENDATION ON A GUILTY PLEA WAS INADVERTENT DID NOT LESSEN ITS IMPACT . WHEN STATE FAILED TO KEEP A COMMITMENT CONCERNING SENTENCE RECOMMENDATION ON A GUILTY PLEA , THE UNITED STATES SUPREME COURTS TO DECIDE WHETHER CIRCUMSTANCE OF CASE REQUIRES ONLY THAT THERE BE SPECIFIC PERFORMANCE OF THE AGREEMENT ON THE GUILTY PLEA , OR WHETHER CIRCUMSTANCES REQUIRED THAT PETITIONER BE GRANTED OPPORTUNITY TO WITHDRAW PLEA .

## UNITED STATES DISTRICT COURT

SENTENCE ANOTHER TIME FOR THE SAME SENTENCE , WITHOUT A HEARING AND WITHOUT ARRAIGNMENT BY MAIL AND I DID NOT SIGN FOR WAVIER THE PROSECUTOR PROMISE WAS UNKEPT SEE SANTOBELLO V NEW YORK CITE AS 92 S.CT. 495 . . this issue WAS FILE ALSO IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT UNDER DOCKET 00-2369 ,FILED FEB . 09,2001 ACCORDINGLY IT IS ORDERED THT THE APPEAL IS DISMISSED FOR LACK OF JURISDICTION . THE FEDERAL JUDGE HONORABLE JOSEPH M. HOOD , UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY SITTING BY DESIGNATION . MY STATEMENT THAT I SHOULD BE ABLE TO APPEAL THE MATTER OF THE FIRE , AT G MENNEN WILLIAM BUILDING CONCERNING THIS CLAIM. THAT WAS OMITTED IN THE ORIGINAL FILING OF CIVIL NO 98 -40240 FL HONORABLE PAUL V GADOLA UNITED STATES DISTRICT JUDGE ,PAGE 5 III ORDER IT IS FURTHER ORDERED THAT PETITIONER'S MOTION TO AMEND AND ATTACH EXHIBITS IS GRANTED . THIS WAS THE ISSUE AS I SETFORTH NOW , CONCERNING PROMISE ARRAIGNMENT BY MAIL AN UNKEP T PLEA .THAT ARE NOT SETFORTH IN §2254 BUT WAS OMMITTED IN ERROR SEE ATTACHMENT OF EXHIBT AND NEWLY DISCOVERY OF EVIDENCE . FROM THE UNITED STATES SUPREME COURT , ON JANURARY 10,2002 ALSO MARCH 28 , 2002 WHEN RICHARD M. LYNCH CHIEF COURT OPERATIONS MAIL NEWLY DISCOVERY OF EVIDENCE OF EXHAUSTED CLAIM OF ARRAIGNMENT BY MAIL & FRAUNDENTLY SIGNING , WAVIER OF ARRAIGNMET MY ATTORNEY FILE A RECORD OF ARRAIGNMENT WITHOUT MY KNOWLEDGE . ON A UNKEPT PROMISE OF TREATMENT ,SEE

FAY V NOIA 83 S.CT. 822

102 S.ct 1198 Rose V Hundy +

Nowaczyk v. Wardlaw  
299 F3d 69 (CA1 2002)

PAGE TWO .



MR. SAMUEL BAINS

SAMUEL BAINS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT MICHIGAN

SAMUEL BAINS , PETITIONER ,

T.G. PHILLIS , WARDIN , RESPONDENT, ET. AL

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PROOF OF SERVICE

STATE OF MICHIGAN)

)ss

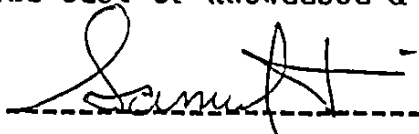
COUNTY OF JACKSON)

THE UNDERSIGNED CERTIFIES THAT ON THE DATE SET FORTH  
BELOW PETITIONER PRO PER. SERVED A COPY OF THE FOLLOWING PAPERS  
UPON RESPONDENT , IN THE ABOVE ACTION BY MAILING A COPY BY  
FIRST CLASS MAIL AS FOLOWING :

1. newly DISCOVERY OF EVIDENCE , EXHIBT SUPREME COURT .
2. PETITION UNDER 28 USC§2254 FOR WRIT OF HABEAS CORPUS BY A  
PERSON IN STATE CUSTODY .
3. STATEMENT OF FACT , BRIEF IN SUPPORT
4. ORDER UNITED STATES COURT OF APPEALS
- 5.
- 6.

[ I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS  
TRUE AND CORRECT TO THE BEST OF KNOWLEDGE & WISDOM]

SAMUEL BAINS



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EXHIBIT A

united state district court  
easter district of micohigan  
southern division

SAMUEL BAINES 134408  
PETITIONER,

V.

CIVIL NO . 98.CV-40240-FL

MARTIN MEKEL, RESPONDENT, /

HONORABLE PAUL V GADOLA

MOTION TO AMEND  
ANNEXION EXHIBIT

EXHIBIT A OF A

PURSUANT TO RULE 15 AMENDED AND SUPPLEMENTAL PLEAD.  
(B) AMENDMENTS TO CONFORM TO THE EVIDENCE.  
(B) EVIDENCE THUS : SEE ATTACHMENT OF ANNEX EXHIBITS AS LISTED AS  
FOLLOWS... ALSO HECK V HUMPHREY ET AL. 512 U.S. 477 ,129 L.ED. 2d  
383

ANNEXED EXHIBIT

PURSUANT TO RULE 15 AMENDED AND SUPPLEMENTAL PLEAD.

(1) ATTORNEY GRIEVANCE COMMISSION , FILE 0437/93 AND DATE OF CASE  
CLOSING APRIL ,3, 1995 . AS EXHIBIT (A) AND A -ONE .

(2) OPINION AND ORDER DENYING DEFENDANTS MOTION FOR POST JUDEMENT  
RELIEF ,. DATE SEP. 29 , 1997 HON . DAVID BRECK CIRCUIT COURT JUDGE,AS  
LISTED EXHIBIT B AND EXHIBIT B 1 .

(3) DEPARTMENT OF STATE POLICD , DOCUMENT OF ILLEGAL DETENTION JULY  
6 ,1998 JULY . 1998 AND 8 , AS EXHIBIT (C) AND C ONE ) JULY 6,1998  
ILL EGAL .

(4) SUBPOENA DUCES TECUM REQUEST FOR PRODUCTION OF DOCUMENTS.DATE  
JUNE 24,1998 . PRAECIPE FOR MOTION AND MISCELLANEOUS DOCKET. DATE  
: FOR WAIVER OF FEES AND COSTS JUNE 34,1998 HEARING

NOTARY SEAL: \_\_\_\_\_

SUBSCRIBED AND SWORN BEFORE ME, : 8-30-99

NOTARY PUBLIC THIS 30th DAY \_\_\_\_ DAY OF JULY 1998.

NOLA M. FETTING  
Notary Public, Washtenaw County, MI  
My Commission Expires Jan. 19, 2001  
Acting In Lenawee County, MI

August 1999

Mail to

ASS- US Attorney  
12-21-98

A EXHIBIT A OF 187

BAIN (SAM)

AD-241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

PhRA - BAIN

United States District Court

District

EASTERN

Name SAMUEL BAINES

Prisoner No. 134408

Case No.

Confinement

Riverside Correctional Facility  
777 West Riverside Dr.

Tonia, Mich 48846

Name of Petitioner (include name under which convicted)

Name of Respondent (authorized person having custody of petitioner)

Samuel Baines  
#134408

v. Stanley Adams, Warden

The Attorney General of the State of:

Michigan

## PETITION

1. Name and location of court which entered the judgment of conviction under attack Oakland County  
Circuit Court, 1200 No. Telegraph Rd., Pontiac, Mich 48341-04042. Date of judgment of conviction 9-24-963. Length of sentence 3 to 15 YEARS4. Nature of offense involved (all counts) Retail Fraud and Fourth HabitualRETAIL FRD 1 750 356c 03 to 15 OFFENSE DATE FOR GUILTY PLEA 9/24/98  
AND FOURTH DEGREE WITH THE ENHANCEMENT OF 96-8713-01 IN OBRIEN COURT.

## RECORD COURT.

5. What was your plea? (Check one)

- (a) Not guilty ☐  
 (b) Guilty ☒  
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐  
 (b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐



241 (Rev. 5/85)

9. If you did appeal, answer the following:

- (a) Name of court Michigan Court Of Appeals
- (b) Result Conviction Affirmed
- (c) Date of result and citation, if known \_\_\_\_\_
- (d) Grounds raised Same as herein
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court Michigan Supreme Court
- (2) Result Leave to appeal Denied
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised Same as herein

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_

D 241 (Rev. 5/85)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT(2) Nature of proceeding OPINION AND ORDER DENYING DEFENDANT MOTION FOR RELIEF OF JUDGEMENT RULE 6.500(3) Grounds raised SAME AS IN 2254 , PETITION UNDER 28.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☐ No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

**CAUTION:** In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you be barred from presenting additional grounds at a later date.

241 (Rev. 5/85)

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you *should* raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession. *2* *OR* *PAR 6*
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Petitioner's Conviction was obtained in violation  
of U.S Const Fourteenth Amendment Due Process Clause

Supporting FACTS (state *briefly* without citing cases or law): Petitioner was never  
Arraigned on prior conviction of 88-89719-FH used to Supplement/Enhance  
predicate conviction of Retail Fraud in Oakland County Circuit Case  
No. 96-8713-01 BEING ENHANCED TO 88-89719 FH IN JUDGE O BRIEN COURT  
RECORD COURT OF THE CITY OF DETROIT.

B. Ground two: Petitioner was denied Due Process Of Law in violation of U.S. Const  
in violation of Fourteenth Amendment.

Supporting FACTS (state *briefly* without citing cases or law): Petitioner was denied jail  
credit time of 277 days spent while incarcerated prior to final judgement  
and sentence to R.A.P. program where later termination of program re-  
sulted in imprisonment. BEING NEVER ARRAIGNED IN CIRCUIT COURT FOR  
FOR REASON OF ATTORNEY FORGERY OF MY SINGTURE AT ARRANGMENT ON INFOR,  
MATION IN OAKLAND , ATTORNEY DAVID A. BINKLEY, 0437/93.

Attorney General on Amended

NO 241 (Rev. 5/85)

C. Ground three: Petitioner was denied the effective assistance of  
of Counsel in violation of the Sixth and Fourteenth Amendment of U.S.

Constitution

Supporting FACTS (state briefly without citing cases or law):

ATTORNEY GRIEVANCE COM

FILE 0437-93 (313)338-9960.DAVID BINKLEY P-31643 ACTING AS AN OFFICER  
OF THE COURT, DID FORGE, OR FRAUDENTLY SIGNED BY SIGNATURE WITHOUT  
MY PERMISSION.

Procedural and Appellate attorney failed to object or raise the  
within enunciated issues but for which petitioner would have had a  
probable different result in the outcome.

D. Ground four Petitioner was denied his liberty without Due Process and  
his fifth amendment rights against Double Jeopardy was violated

Supporting FACTS (state briefly without citing cases or law):

9.26.89 Petitioner was sentence

twice for the same crime where on 1/19/89 petitioner was sentence to

1yr suspended to R.A.P. program, afterward, Petitioner was sentence

once again for the same crime to from 1-15 yrs imprisonment as fourth

habitual in 10/89 related to conviction for retail fraud. THENCE : YOU CAN

T USE A TREATMENT PROGRAM FOR THE ENHANCEMENT UNDER MENTAL HEALTH  
CODE. THUS : A CASE WAS VIOLATION OF MY DUE PROCESS RIGHTS WITHOUT  
ARRIGNMENT IN CIRCUIT COURT OF OAKLAND COURT FOR REASON OF FORGERY.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing TERRY PRICE, PUBLIC DEFENDER

(b) At arraignment and plea \_\_\_\_\_

O 241 (Rev. 5/85)

(c) At trial \_\_\_\_\_

(d) At sentencing MELINDA CAMERON 26085 W SIX MILE (313)534-8939(e) On appeal DANA BRUCE CARRON, 65 CADILLAC SQUARE, SUITE 2200  
DETROIT, MICH 48226-2888

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

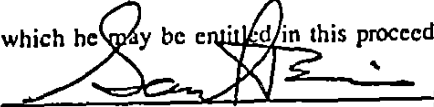
(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

 PRO-PRC  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

X  
(date)  
Signature of Petitioner

UNITED STATE DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

SAMUEL BAINS, PETITIONER,

V

T.G. PHILLIP WARDEN,

-----  
SAMUEL BAINS 134408  
(JCS) CORRECTIONAL FACILITY  
COOPER STREET CORRECTIONAL  
3100 COOPER STREET  
JACKSON , MI 49201

PETITIONER'S APPENDIX

DATE: JANURARY , 2003





DEBBIE STABENOW  
MICHIGAN

COMMITTEES:  
AGRICULTURE, NUTRITION, AND FORESTRY  
BANKING, HOUSING, AND URBAN AFFAIRS  
BUDGET  
SPECIAL COMMITTEE ON AGING

## United States Senate

WASHINGTON, DC 20510-2204

EXHIBIT B

June 5, 2002

Samuel Baines #134408  
Pugsley Correctional Facility  
7401 Walton Road  
Kingsley, Michigan 49649

Thank you . . .

. . . for contacting me regarding the Michigan Department of Corrections. I appreciate you taking the time to share your concerns with me.

Since the issue you raise is under the jurisdiction of the Michigan State Legislature, I have forwarded your letter to the Michigan Legislative Corrections Ombudsman. This office was established to serve as a liaison between the public and the Michigan Department of Corrections.

Thank you again for contacting me. If you have questions or need further assistance on this issue, please contact your State Senator from your home district.

Sincerely,



Debbie Stabenow  
United States Senator

DS:sps  
cc: Michigan Legislative Corrections Ombudsman

PLEA AND ARRAINGMENT

SENATE BILL 536

Exhibit B

THIS IS CONCERNIG THE HOUSE BILL OR SENATE BILL 536 UNANIMOUSLY PASSED THE SENTATE ON DECEMEBER 10,1997 . THIS BILL WOULD ALLOW FOR BAIL HEARING AND ARRAINMENTS BY TELEPHONE OR IF AN INDIVIDUAL IS INCARCERATED OUTSLDE THE JURISDICTION, ARRAINGMENT BY MAIL OR DOCUMENT FILED WITH THE COURT . IN ALL INSTANCES, THE DEFENATIN MUST BY PERSONALLY PRESENT UPON REQUEST. THEPORTION OF THIS BILL THAT ALLOWED FOR PLEAS BY TELEPHONE WAS ELIMINATED , THANKS TO TESTIMONY BY SADO MARTY TIEDER. .

this COMPLAINT is A MATTER OF RECORD THAT ARE ON FILE AT THE OAKLAND COUNTY COURT HOUSE . THE SENTENCE OF JUDGE BRECK , THIS IS A ilLEGAL SENTENCE BASE ON THE FACT THIER WAS NO SENATE BILL PASS AT THE TIME OF SENTENCE . THAT IS IN THE YEAR 1988 , i HAVE BEEN SERVING TIME ilLEGAL , FOR THE FACT OF THE MATTER I WAS NEVER UNDER THE JURISDACTION OF THE COURT in OAKLAND . THUS I FILE THIS COMPLAINT THE SENATE .

CONCERNIONG THE SENTENCE OF 88-89719 FH OF JUDGE DAVID BRECK . THE COURT RULE 2.507 CONDUCT OF TRIAL SECTION (H) ? AGREEMENT TO BE IN WRITING . SANTOBELLO V NEW YORK 404 US 257 , 260 92 SC.T. 495 , 498 , 30 L.Ed. 2d 427 . PLEA BARGAINING

TO AVOID A COERCIVE EFFECT ON THE DEFENDANT & LOSS OF PUBLIC CONFIDENCE IN THE JUDICIAL SYSTEM VOLUNTARINESS OF THE WAIVER . IS A MUST THENCE I WAS DENIED A WAIVER OF ARRIGNMENT AND PROMISE TREATMENT IN A PROGRAM CALL RAP . SENTENCE AGREEMENT AND RESENTENCE TO A LONGER TERM OF 1 to 15 WITHOUT THE ARRAIGNMENT OF INFORMATION THE SENATE BILL 536 STATE THAT THEIR IS A ARARRAIMENT BY Mii. i WAS PROMISE TREATMENT AND PROMISE ARRAINGMENT BY MAIL BUT I DIDNIT RECIVE THE ARRAIGNMENT AT ALL . THE ATTORNEY DID SIGN BY NAME WITHOUT MY KNOLWEDLGE OR PERMISSION . THUS: THE CASE IS ilLEGAL IN NATURE . "THE ATTORNEY COMMISSION DID , WARN THE ATTORNEY DAVID BLINKLEY AND STATE TO USE MY CANDOR IN THE FUTURE . THUS i WAS NEVER ARRAignment on the information .

the court is without jurdication . see attachment of evidence i have file this complaint with the supreme court adminstration they take on action in this matter . i am unable with the skill in law to file this case , and i did try with the knowledge of the issue . but i did not prevail . so i file tis complaint with the senate . see exhibitbt from the FBI AND OTHER STATE REPRESENTive

office . i still need your help as statement make from the senate letter that you should help with the assistance i need that is a attorney . under the code of us 18 USC 3006 i do need expert help from your office . i need further assistnce on this issue please of house bill 536 i was sentence on 12 -88 & 89 OCT . WITH a arrainment by mail and forgery of signature on promise to get treatment at call rap . violaiton of senate bill 536 THEIR ARE at less a 1000people sentence by arraignment by mial in oakland county . in 1989 - 88-87 CHECK FILE OF COURT

[i declare under the penalty of perjury the foregoing is true

  
 SAMUEL BAINES 134408 3 c-12

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SAMUEL BAINES,

Petitioner,

v

CIVIL DOCKET NO. 99CV-74594-DT  
HONORABLE PATRICK J. DUGGAN

FRANK ELO,

Respondent.


NOTICE OF FILING PARTIAL RULE 5 MATERIALS

TO: 134408 Samuel Baines  
Adrian Temporary Correctional Facility  
2727 East Beecher Street  
Adrian, MI 49221

PLEASE TAKE NOTICE that a copy of Petitioner's Partial Rule 5 Materials is being served upon the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, as set forth in the attached Index of Partial Record. The state court records relating to Petitioner's conviction for which this petition is filed were destroyed in the February 15, 1999 fire at the G. Mennen Williams Building, Lansing, Michigan. Attempts to recreate the file by obtaining copies from the Prosecutor's office have failed as their record is no longer available.

Respectfully submitted,

JENNIFER M. GRANHOLM  
Attorney General

  
Vincent Leone (P24093)  
Assistant Attorney General  
Attorneys for Respondent

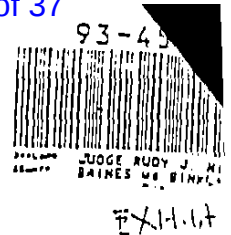
Habeas Corpus Division  
120 North Washington Square  
Lansing, Michigan

Dated: August 7, 2000

Telephone: (517) 373-4875

STATE OF MICHIGAN

SUMMONS AND COMPLAINT



## JURISDICTION:

## MEMORANDUM EXHIBIT D

1. MC.R 6.104 arraignment on the Warrant or Complaint

(A) Arraignment without unnecessary delay.

Appearance within the next 14 days.

1 of 1 is a manifestation of violation, of law. I have not been or had arraignment of Complaint on case number 88-8971FH and was not present at the hearing.

I was never under jurisdiction of the Circuit Court.

Violation of 14 day requirement of law, M.C.R. 6.104(E) (2) and Complaint filed at or before the time of arraignment was not done without the 14 day time limit of statute of limitation of MCR 6.104

(B) In subrule (E) 2, was a violation of my rights. I was given 3 different dates for the arraignment. I was not present at any of my said arraignments nor did I sign for a Waiver of Arraignment. A manifest violation of Rule 6.104 for arraignment of the Warrant and or Complaint

~~2. Violation of General Provisions, presence of Defendant Rule 43 (A) 2 of 2 c. Violation of the fourteenth amendment (A)~~  
 Presence is required. The Defendant shall be present at the arraignment at the time set by the Court (18 4208 William v People of the state of New York, 337 U.S. 241 250, 251 69 S.Ct 1079, L.ED 1337 1949).

The court said that the fourteenth amendment was not to be treated "As a uniform command that courts throughout the nation abandon their age old practice of seeking information from outside of court sources to guide their judgement toward a more enlightened and just sentence (see Hoover v United States 268,F.2d 787,790 CA. 10, 1959).

3. MSA 28.445 (Forgery of records and other instruments venue) Sev 248 (1) Any person who shall falsely make, alter, forge or counterfeit any public record shall be in violation of law. The forgery of my signature for a waiver of arraignment by my



**The Circuit Court**  
for the Sixth Judicial Circuit Court  
**OFFICE OF THE COURT ADMINISTRATOR**

1300 N TELEGRAPH RD DEPT 404  
PONTIAC MI 48341-0404

EXHIBIT E

To: Samuel Baines Date: 8-15-01 Case No.: 1988-089719-FH

We have received your letter of request. The item(s) checked below apply to your case.

Enclosed is a copy of your Circuit Court: File ☐ Docket ☐ Transcript(s) ☐

We need your Circuit Court case number to review your request. ☐

Your request for transcript(s)/file appears to be untimely. We can not comply with your request unless you show you are entitled to the information under the Michigan Court Rules. ☐

Our records reflect you were sent a complete copy of your transcript(s)/file. Under the Michigan Court Rules, you must prove why you should receive another copy. ☐

Please contact your attorney. ☐

The information you requested is not a part of the court file. ☐

Complying with your request would constitute legal advice. We are prohibited by law from providing legal advice. ☐

- To obtain copies of your transcript(s)/file, you must state *specifically* why you need them. For further information, see the Michigan Court Rules. ☐

Please state *specifically* what type of post-conviction relief you are seeking. ☐

We do not provide pre-sentence information reports (PSI). After sentencing, copies of your PSI are sent directly to your prison file. You may ask prison officials or counselors for permission to review the PSI report located in your prison file. ☒

Prison Legal Services may be of some assistance to you. You may reach them at:  
P.O. Box 828, Jackson, MI 49201. ☐

Other As we have indicated to you on prior occasions, you have previously received your complete court file, a docket, and all transcripts that pertain to your case. We have enclosed copies of the proofs of mailings that reflect this. Our records reflect that your arraignment was done by mail; your Motion for Relief from Judgment was denied. We can be of no further assistance to you.

NO. 00-00-2369

UNITED STATES COURT OF APPEAL  
FOR THE SIXTH CIRCUIT

SAMUEL BAINES, APPELLATE

BAINES V ELO

CASE No. CR-88-89719-FH

V

FRANK ELO, ET. AL, RESPONDENT

AFFIDAVIT  
STATEMENT OF FACT

MCLA 768.36; code of criminal procedure section 5, plea in general record support petitioner Samuel Baines has argument that his guilty plea was an illusion because it was based upon a promise that he would receive treatment in a RAP drug program based upon a due process with regard to required findings of a plea of guilty. Plea was induced by the unfulfilled promise that the petitioner would receive treatment for drugs and alcoholic addiction. This means that the guilty plea of 88089719FH, enhanced by 96-7813-01, was involuntary because it promised treatment as part of the sentencing requirements. The RAP House Drug Facility is federally funded. Judge D. Breck sentenced and ordered prosecution to oversee the transfer. He did facilitate the determination of qualified individuals with disability; Mulley v Briggs 475 US 335 106 S.Ct. 1092, 89 L.Ed. 271 (1986). The Department of Corrections has a panel that was set up by the legislature exclusively for the treatment for drug or alcohol abuse in a community setting.

The title object provision of the Michigan Constitution, because the statute embraces more than one object and the object embraced in its title or the general title of the code of criminal procedure. The guilty statute violates re-enactment of the published provision of the Michigan Constitution because the statute expressly afforded provision of mental health codes without re-enacting and republishing that act; People v Mack

(1981) 305 N.W.2d 264, 104 Mich. App. 560 Section 16 treatment in general, a sentence to a community treatment in case 88-89719FH enhanced to 96-7813-01 is in very most unconstitutional of ADA and due process. Once the moving party presents a prima facie showing that he is entitled to judgment as a matter of law, the party opposing the affidavit or denial in response or pleading. But must set forth specific facts showing that genuine issues for trial exist. Anderson 477 U.S. 256-57, 106 S.Ct. at 2514-2415. Deliberate indifference of MDOC raises the 8th amendment violation that would entitle a petitioner the claim of deliberate indifference.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Samuel Baines



OFFICIAL COURT OF APPEALS CAPTION FOR 00-2369

SAMUEL BAINES

Petitioner - Appellant

v.

FRANK ELO

Respondent - Appellee

-----|

BRIEF IN SUPPORT

PURSUANT TO LAKIN V STINE 44F. SUPP. 2d 897 (1999) THE FACT THAT DANA CARRON WAS NOT HAVING A MEANINGFUL ATTORNEY CLIENT RELATIONSHIP . WITHOUT COMMUNICATION? THE ATTORNEY CAN ONLY POSTURE AS ONE . THE COMMUNICATION DERIVES AN ATTORNEY A NECESSARY ELEMENT COMPOSING A LAWYER . REQUEST FOR A NEW COUNSEL AND LETTER TO THE APPEAL COURT WAS NOT ANSWER . THE EXACT LETTER IS ATTACHMENT AS EXHIBITS . REQUEST FOR A NEW COUNSEL CONCLUSIONS MADE SUBSTANTIAL EFFORT PRIOR TO THE COMMENCEMENT OF APPEAL BUT I DID NOT SECURE RESPONSIVE COUNSEL FOR I DID TRY . I CALLED SEVERAL TIMES BUT THE ATTORNEY WOULD NOT ACCEPT. I WROTE LETTER S THE ONLY ONE HE ANSWERED WAS FOR A NEW CLIENT. THIS IS THE ONLY LETTER I RECIEVE BEFORE THE APPEAL . I ASK FOR HELP AND HE WOULD NOT GIVE EXPLAINT THE PURPOSE OF OR REASON WHY HE WOULD NOT HELP .

| I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT -

-----|

SAMUEL BAINES

DATE:

PAGE SIX

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No: 00-2369

Filed: March 19, 2001

SAMUEL BAINES

Petitioner - Appellant

v.

FRANK ELO

Respondent - Appellee

MANDATE

Pursuant to the court's disposition that was filed 2/9/01  
the mandate for this case hereby issues today.

A True Copy.

FRAP 39 COSTS: NONE

Attest:

Filing Fee .....\$  
Printing .....\$  
Total .....\$

  
Deputy Clerk

3.19.99  
[CLOSED]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

U.S. DIST. COURT CLERK  
EAST. DIST. MICH.

1999 MAR 19 A 10:37

EXH. 1  
A

SAMUEL BAINES,

Petitioner,

v.

Civil No. 98-40240-FL  
HONORABLE PAUL V. GADOLA  
UNITED STATES DISTRICT JUDGE

STANLEY ADAMS,

Respondent.

ORDER OF SUMMARY DISMISSAL

Samuel Baines, ("petitioner"), presently confined at the Riverside Correctional Facility in Ionia, Michigan, seeks the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his application, filed pro se, petitioner challenges his conviction on one count of retail fraud, first-degree, M.C.L. 750.356c; M.S.A.28.588(3) and being a fourth felony habitual offender, M.C.L. 769.12; M.S.A. 28.1084. The State of Michigan has brought a motion to dismiss, claiming that petitioner has failed to exhaust his state court remedies. For the reasons stated below, the motion to dismiss is granted and the petition for writ of habeas corpus is dismissed without prejudice.

I. Background

CAPTION introduction

Petitioner was convicted in the Detroit Recorder's Court of retail fraud, first-degree and of being a fourth felony habitual offender on January 22, 1997 before Judge John Patrick O'Brien. He was sentenced to three (3) to fifteen (15) years in prison. The

Michigan Court of Appeals denied leave to appeal on October 28, 1997.<sup>1</sup> The Michigan Supreme Court denied leave to appeal on May 28, 1998.<sup>2</sup> Respondent now urges this Court to dismiss the petition on the grounds that petitioner has presented a mixed petition containing both exhausted and unexhausted claims. Petitioner has failed to respond to the motion to dismiss or present any evidence to this Court that all of the claims in his petition have been exhausted with the Michigan state courts.

## II. Discussion

The petition for writ of habeas corpus must be dismissed without prejudice because the petition contains several claims which petitioner has failed to exhaust in the Michigan courts prior to the filing of this habeas petition in federal court.

A habeas petitioner must fairly present the substance of each federal constitutional claim in state court before raising a claim in federal court. 28 U.S.C. § 2254(b) and(c); *Picard v. Connor*, 404 U.S.270,275-278;92 S.Ct. 509; 30 L.Ed. 2d 438 (1971). The requirement of exhaustion of state remedies as a prerequisite to habeas corpus review is designed to protect the state court's role in enforcement of federal law and to prevent disruption of state judicial proceedings by the federal courts. *Velez v. People of the State of New York*, 941 F. Supp. 300, 309 (E.D.N.Y. 1996)."A

---

<sup>1</sup>Michigan Court of Appeals Docket # 205188.

<sup>2</sup>Michigan Supreme Court Docket # 111168.

petitioner 'fairly presents' his claim to the state courts by citing a provision of the Constitution, federal decisions using constitutional analysis, or state decisions employing constitutional analysis in similar fact patterns." *Levine v. Torvik*, 986 F.2d 1506, 1516 (6th Cir. 1993); cert. denied, 509 U.S. 097, 113 S.Ct. 3001; 125 L. Ed. 2d 694 (1993). It is the petitioner's burden to prove exhaustion of state remedies. *Rust v. Zent*, 17 F.3d 155, 160 (6<sup>th</sup> Cir. 1994).

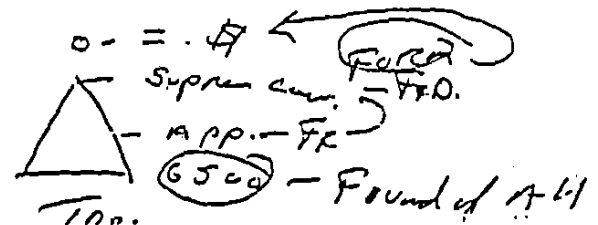
A prisoner confined pursuant to a Michigan conviction must raise each habeas issue in the Michigan Court of Appeals and in the Michigan Supreme Court before seeking federal habeas corpus relief. *Hafley v. Sowders*, 902 F. 2d 480, 483 (6th Cir. 1990); *Grant v. Rivers*, 920 F. Supp. 769, 779 (E.D. Mich. 1996). A habeas petitioner must normally present his or her claims to the state's highest appellate court to exhaust his or her state remedies. *Daniel v. Overton*, 845 F. Supp. 1170, 1173 (E.D. Mich. 1994).

In the present case, the petition for writ of habeas corpus must be dismissed because petitioner has failed to exhaust three out of the four claims in his petition with the state courts. A habeas petition containing both exhausted and unexhausted claims must be dismissed in its entirety. *Nasr v. Stegall*, 978 F. Supp. 714, 716 (E.D. Mich. 1997). If a habeas petition contains both exhausted and unexhausted claims, the general rule is to dismiss such mixed petitions so as to allow for the exhaustion of the

unexhausted claims. *Barker v. Yukins*, 993 F. Supp. 592, 596 (E.D. Mich. 1998). Petitioner must first exhaust these remaining claims in the Michigan appellate courts before this Court can entertain his petition for writ of habeas corpus.

Petitioner's method of exhausting these claims in the state courts would be by means of filing a motion for relief from judgment with the Detroit Recorder's Court under M.C.R. 6.501. A defendant may request the appointment of counsel to assist with the motion for relief from judgment and the trial court is required to appoint counsel, if the court requires oral argument or an evidentiary hearing. M.C.R. 6.505. A denial of a motion for relief from judgment is reviewable by the Michigan Court of Appeals upon the filing of an application for leave to appeal within one year from the denial of the motion for relief from judgment. M.C.R. 6.509; M.C.R. 7.205(F). Any decision of the Michigan Court of Appeals may be reviewed by filing an application for leave to appeal with the Michigan Supreme Court. M.C.R. 7.302. A defendant's criminal conviction is reviewable in accordance with M.C.R. 6.500 et. seq. where the defendant fails to pursue an appeal by right or when the time limitation for filing an application for leave to appeal has expired. *People v. Caston*, 228 Mich. App. 291, 297-298; 579 N.W. 2d 368 (1998).

Because petitioner still has post-conviction remedies available to him, he is unable to demonstrate that it would be impossible or futile for him to exhaust his state court remedies.



Accordingly, this Court will dismiss the petition without prejudice to allow petitioner to exhaust the remaining issues in his petition with the Michigan state courts.

Although the issue is now moot, this Court will grant petitioner's motions to amend the petition and annex exhibits. With respect to petitioner's motion for reconsideration of this Court's Order Denying the Appointment of Counsel, this Court will deny the motion for reconsideration because petitioner merely presented the same issues in his motion for reconsideration as the ones presented in his original request for the appointment of counsel. A motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Czajkowski v. Tindall & Associates, P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). U.S. Dist.Ct. Rules, E.D. Mich. 7.1(h).

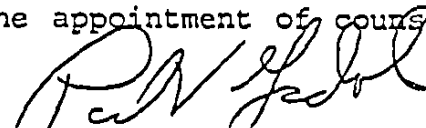
*Crown letter  
to 6 Circuit*

### III. ORDER

Based upon the foregoing, IT IS ORDERED that the petition for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE.

It is further ORDERED that petitioner's motion to amend and attach exhibits is GRANTED.

It is further ORDERED that petitioner's motion for reconsideration on his motion for the appointment of counsel is DENIED.

  
HON. PAUL V. GADOLA  
UNITED STATES DISTRICT COURT

*3/18/99*

DEBBIE STABENOW  
MICHIGAN

COMMITTEES:  
AGRICULTURE, NUTRITION, AND FORESTRY  
BANKING, HOUSING, AND URBAN AFFAIRS  
BUDGET  
SPECIAL COMMITTEE ON AGING

## United States Senate

WASHINGTON, DC 20510-2204

June 5, 2002

Samuel Baines #134408  
Pugsley Correctional Facility  
7401 Walton Road  
Kingsley, Michigan 49649

Thank you . . .

. . . for contacting me regarding the Michigan Department of Corrections. I appreciate you taking the time to share your concerns with me.

Since the issue you raise is under the jurisdiction of the Michigan State Legislature, I have forwarded your letter to the Michigan Legislative Corrections Ombudsman. This office was established to serve as a liaison between the public and the Michigan Department of Corrections.

Thank you again for contacting me. If you have questions or need further assistance on this issue, please contact your State Senator from your home district.

Sincerely,



Debbie Stabenow  
United States Senator

DS:sps

cc: Michigan Legislative Corrections Ombudsman